1948 **File No.** O/CPC/48
19/48

Legal Department

G **BRANCH**

K

Subject:-

Opinion Under Civil Procedure Code

P4/E

File No. O/GPC/48
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The following two points are raised for Remembrancer of Legal Affairs' consideration:-

1) Whether a prosecution against Mr.Bhanage would be tenable for his alleged illegal action in not issuing a ration card to Mr. Saptarshi and his family for a period of 40 days; and

2) Whether a Civil Suit if filed by Mr.Saptarshi against the Provincial Government and Mr. Bhanage for recovery of compensation of Rs.1000/- for the monetary loss and physical and mental worries and lowering of social prestige suffered by Mr.Saptarshi as a result of the failure to issue a ration card for 40 days, would be defensible.

Q.No.1. Clause 10 of the Bombay Rationing Order, 1943 provides that with a view to controlling the distribution of any rationed article, the Privincial Government may issue or cause to be issued to any person of class of persons or to the public generally in any rationed area ration documents for the purposes of rationing of such article. Clause 5 of the Ahmednagar Rationing Regulation, 1944, provides that for the purposes of household consumption in Ahmednagar City, ration cards and ration tickets issued shall be the ration documents. Clause 7 of the said regulation provides that if a person desired to have a ration card he should apply to the Rationing Officer in the form prescribed by the Rationing Officer. A ration card is issued to the applicant under clause 12(1) (a). No time limit is statutorily fixed for issuing the ration card and there is therefore no question of prosecuting the Rationing Officer for not issuing a card in time though his action has no doubt resulted in a lot of inconvenience to Mr.Saptarshi and his family. Mr. Saptarshi's ration cards were attached on 5th July 1946 and thereafter fresh Ration Cards should have been issued without any application form. (see para 126 of the Instructions issued to Rationing Officers at page 47 of the booklet 'The Small Towns Rationing Scheme'). "A mere breach of departmental rules will not bring a public servant within the purview of Section 166 Indian Penal Code (page 385 Ratanlal's Law of Crimes.). A departmental enquiry was held against Mr. Bhanage and the Commissioner, Central Division reprimanded him for his

failure to issue a temporary card to Mr. Saptarshi on the very day on which his card was attached and he was also warned that it would not be possible to retain him in the Rationing Department if further similar instances occur through his negligence. Against the above order of the Commissioner, Mr. Saptarshi appealed to the Government of Bombay but on 6th November 1947 he was informed that Government saw no reason to interfere with the Commissioner's Order and it was also pointed out to Mr. Saptarshi that the Ex-Rationing Officer Mr. Bhangge has not committed any offence for which he can be prosecuted as suggested by him. Prosecution is therefore out of question in this case.

Q.No.2.

The Suit, if filed against Government would be defensible for the following reasons-

1) The cause of action arose in this case on 5th July 1946 and for 40 days thereafter i.e. when the Defence of India Act and Rules were in force. Protection can be claimed under Section 17(2) of the Defence of India Act which provides that no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused anything in good faith done or intended to be done in pursuance of the Act or any Rules made thereunder or any Order issued under any such rules.

2) There is no remedy against the Crown for a tort. The Crown cannot be charged with negligence, fraud or other forms of tortuous wrong doing nor it is responsible for the wrongful acts of its servants(Salmond; Law of Torts Page 71). Government is therefore not responsible for the misfeasance or wrong or negligence of its subordinate officers even assuming that the action of such officer was malicious or wrongful (I.L.R.39 Mad 351, I.L.R. 9 Rangoon 375, I.L.R. 1939 Mad 843).

As Mr. Bhangge is no longer in service, the question of his Civil liability need not be considered.

P.M.L./31/5.

Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No.5150, dated 31st May 1948.

S.L./12.7.56. 4c.

The view taken by the Civil Supplies Department is correct. As the consignment was booked by Mr. Bedare on his own behalf and not as an agent of Mr.Patil, Mr.Patil cannot be prosecuted as an abettor. The contract was for delivery of the goods by Mr. Bedare at Dudhani station. Mr.Bedare is, therefore, solely responsible for the export and he may be prosecuted as proposed by the Civil Supplies Department. It is true that the Railway Receipt was delivered to Mr. Patil at Loni Station but this was purely for taking delivery.

It is not clear whether the question regarding the disposal of Rs. 27,900 realized in auction sale of the two consignments is referred to this Department for opinion or not. However, as both the consignments are 'property' in respect of which offences punishable under Section 7 of the Essential Supplies (Temporary Powers) Act are alleged to have been committed, the consignments are liable to be forfeited and the view that the Collector may Continue to hold the amount subject to the Court's Orders instead of paying it to Mr. Patil is correct

P.M.L/16.2

Remembrancer of Legal Affairs.

U.O.R. to C.S.D.ØII, No.G/712, dated 17/12/48.

S.L./12.7.56. 4c.